Filed 6/2/04 Lazer v. Dalton CA6

NOT TO BE PUBLISHED IN OFFICIAL REPORTS

IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA

SIXTH APPELLATE DISTRICT

WENDY LAZER, Plaintiff and Appellant, v. DONNA DALTON, Defendant and Respondent.	H025328 (Monterey County Super. Ct. No. M51143)

This appeal is from a defense judgment in a negligence action, which followed the trial court's grant of nonsuit. Plaintiff appeals, asserting she presented sufficient evidence to warrant a jury finding. We agree and reverse.

FACTUAL AND PROCEDURAL BACKGROUND

The Parties

Plaintiff Wendy Lazer is a real estate broker. She was the listing agent for a property at 1441 Riata Road in Pebble Beach owned by defendant Donna Dalton. Dalton, a licensed contractor, oversaw the construction of the house and also lived in it for four and a half months. Lazer and Dalton were friends of many years' standing as well as business associates.

The Accident

On the afternoon of October 29, 1999, plaintiff went to the residence to deliver a blouse. She parked her car at the foot of the main stairway and climbed the steps to the front door from the left side of the stairway. The blouse was over her left arm and the key was in her right hand. She had never entered the residence using these stairs before; she normally entered through the garage. She was at the very top step or landing and getting ready to open the door when she "slipped, tripped on something strange." Just before she fell, she had a "fleeting" awareness "of all of it being wet, very wet." She also had a sense there was something "inconsistent" about the top step. "My foot didn't seem to know that step, to recognize it, because I had come up that big big staircase . . . which seemed to be five stairs or six and a landing, five more, and now I'm up maybe one more series of that, and I'm up on this big landing heading to the front door thinking I'm just going to open the front door. And this funny, smaller, inconsistent . . . step, it was much smaller."

The Injury

As a result of the slip or trip, plaintiff fell on the left side of the top step and felt a searing pain in her ankle. Thinking she had simply twisted her ankle, she tried to stand up, but there was nothing to grab or hold onto. In fact, plaintiff had not merely twisted an ankle but had torn her Achilles tendon. When she tried to stand up, her left leg would not support her, and she fell again. This time she broke her shoulder and tore the rotator cuff.

Plaintiff's Condition

Plaintiff had not drunk any alcoholic beverage at lunch that day, and had been looking where she was walking, without distraction, just prior to falling. She wore leather shoes that were not high-heeled.

Plaintiff's Knowledge of the Defects

Prior to the accident, plaintiff had not told defendant there was a problem with the entry way landing. As the listing agent for the property, plaintiff was required to disclose

to the buyer of the property any defects known to her. Plaintiff signed a disclosure form on which she noted no items and represented that she "watched [the residence] being constructed, very meticulous, excellent construction."

The Top Step

Defendant remodeled the existing steps after she bought the house. She admitted the top step was different in height from the other stairs by about 3 inches. Cynthia Brown worked with plaintiff on the Riata Road listing. She never saw plaintiff climb the front stairs, but she herself did so. She never had a problem going up the stairs, but she "always had a small problem" negotiating the top step at the front door "because of the way the door opens and the step is shorter and smaller." She also noticed that other realtors had problems with the top step. She recalled one realtor in particular who stubbed the toe of his shoe on the step as he held the front door open for his clients. She communicated her concerns about the step and the landing to plaintiff and they, in turn, gingerly communicated those concerns to defendant over a casual lunch when they discussed both positive and negative aspects of the property. Defendant was not very receptive to negative comments and "before we could finish our talk, she had the answer." According to Brown, when she tried to tell defendant about the step, "she cut me off." Although "[s]he never was told somebody might fall . . . ," they did "mention to her after the brokers caravan all of the concerns of the brokers that came through."

Wetness on the Landing

Brown also recalled that to the right of the front door there was a potted plant with "ratty looking green moss growing, looked like a pond." Frequently when she would show the house in the late morning or early afternoon, "the little water catch there would be filled to the top or there would be water around" the plant. The water she observed was always to the right of the front steps, in a puddle of about six to seven inches in length. She told defendant the plant was an "eyesore."

At one time there had been a mat at the front door, but every time Brown went to the house, the base of it was always wet. Eventually, the mat was taken away because it was wet and dirty.

Brown sometimes saw people doing garden work at the house. Every time she came to the house, the steps had been cleaned with water because the front yard had "a lot of pine and just any bit of wind would have pine needles everywhere." She believed the water she saw "had to be from the hose" next to a shrub on the left side of the landing. It "looked like water from a hose from watering," not like precipitation from the sky.

Defendant testified she was never personally on the landing or the surrounding area when it was wet. Nor had she ever seen it wet. She hired a gardening contractor and his crew of workers to come twice a week, and more often when plaintiff had an open house, to "spruce up" the landscaping. She assumed the gardeners used a blower, but she never inspected their work after they did it. She had never seen over-watering of the potted plant, or standing water in front of the plant, nor had anyone told her of any such problems. She acknowledged the existence of a stain on the limestone stairs, but opined it could be water, red wine, dirt, or a natural stain from limestone. She also acknowledged there was a hose to the left of the entryway and believed it was used for watering the potted plant and the bushes to the left of the entryway, although she didn't know. There used to be a mat on the landing in front of the doorway, but she took it away because when it was raining, or when the gardeners cleaned the steps with water, the mat would get wet and then leave a moisture stain. She did not recall Cynthia Brown telling her that water ponded in front of the plant.

William Siebrandt bought the property from defendant. At the time he bought it, there was an area on the top landing "where water sits over on the left side." He did not notice any water stains prior to the purchase, but since he began living there, he noticed standing water "to the left area especially" and a stain about two to three feet developed

in the area of the front entrance step. Eventually he intended to make changes to the landing "because when it gets wet it gets slippery." Even though his reasons for making changes were primarily esthetic, "the standing water will be the issue addressed." He recalled one time when a person "just slipped" or "just tripped" midway up the stairs.

Plaintiff's Statements at the Hospital

Brown visited plaintiff at the hospital. Plaintiff told her she had fallen and "mentioned she thought it was wet there." Warren Bryant, an old friend of plaintiff, saw her at the hospital soon after she had surgery. Plaintiff was groggy, but she told him she "fell on Donna's step." At that time, he also heard plaintiff tell defendant, "I fell on your dumb step."

According to defendant, when she asked plaintiff at the hospital what had happened, plaintiff said, " 'I'm so clumsy. And I fell and trip' " [sic] on the front doorstep.

Expert Testimony

Dr. Allen Derucher, a professor of civil engineering, testified as an expert for plaintiff on residential construction and slip or trip and falls. He inspected the residence at Riata Road. He first determined that the normal pathway to front door was up the left side of the stairway, because the front door was off-set to the left and there was a railing on the left side. He then measured the "coefficient of friction" that is, the slip resistance, of limestone with leather footwear, using a device known as a "slip motor" or a "horizontal pull." He also measured "the height of the risers associated with the stair facility." Finally, he used a level "on the main landing next to the single step facility."

Wetness

Dr. Derucher's inspection revealed evidence of a water problem on the stairs. First, he found stains on the limestone within the normal pathway. In addition, at the landing in front of the door, he found "an eighth-inch difference in levelness from one end to the other of some of the tile within a one foot by two and a half foot area." That

eighth-inch differential created a depression where water would pond. He determined that "the landing area due to the ponding situation created an unsafe maintenance situation." The brick border trimming the limestone added to the problem because "[b]rick is a very porous material. Brick will retain the moisture as well, and you can carry moisture on your shoe. . . ."

In Dr. Derucher's opinion, limestone also gets slippery when wet. When dry, however, the limestone's coefficient of friction exceeded the safety standard for slipperiness 10 out of 10 times. Even so, one could extrapolate from the test results on dry limestone that, when wet, the limestone would only meet the safety standard four out of 10 times.

Height of Step

He also found a problem with the height of the riser in the top step. Although Dr. Derucher admitted that the width, height and depth of the entrance step to the residence conformed to the minimum building code requirements for a landing under the 1994 Uniform Building Code applicable at the time the house was remodeled, and enforced by Monterey County, he still felt the landing could have been designed differently and made safer. In his view, "if you were going to leave it the way it was without placement of a mat there, that you should also have a railing at the door so . . . you could catch yourself if you were to start to go down. . . . And . . . too . . . due to the size of the one step facility being five and an eighth inches high, that . . . was low from standards, and from research that it would be difficult to see. And that at the same time you should have a railing there, again, to catch yourself if there was a slip." He acknowledged that the building code did not require a railing on the single step entry.

The Pleading and The Trial Court's Ruling

Plaintiff filed a complaint alleging negligence by defendant, her agents, and her employees in the construction and maintenance of the Riata Road property. Her single cause of action for premises liability was predicated on two theories of liability: (1) a

defect in the construction of a too-small top step and a depression in the tile next to the top step where water could pool, and (2) negligence in the maintenance of the step and landing through excessive watering of nearby plants and hosing of the stairway and landing.

Following the presentation of plaintiff's case to the jury, the defense made a motion for nonsuit. Giving "full credence to all of the evidence that has been presented so far[,] [a]ll the evidence presented by the plaintiff, and anything deduced by the defense on cross-examination," the court found that: (1) the upper landing and final step were constructed with proper materials and in accordance with the code; (2) the expert's opinions about how the landing could have been made safer were based on mere guidelines which were not binding on contractors in California "or anywhere else"; (3) there was no evidence the defendant was aware of an "unreasonably risky or dangerous situation" and (4) having built the landing according to code, defendant was "not chargeable . . . with knowledge of any reason to suspect unreasonable danger or . . . risk."

In explaining its ruling to the jury, the court said: "The question of moisture . . . is largely irrelevant. . . . [T]he landing as it exists was either defective in some way or it's not defective, and there is no evidence that it is defective. There was some evidence of a slight depression in some area where water might pool, but that's not been connected to the injury."

The court made no mention of water on the steps or landing in its written order. Rather, the court reiterated there was no defect in construction, inasmuch as code requirements were met, and there were no previous complaints or incidents or conditions "apparent to the eye" to put defendant on notice of any dangerous condition. Finally, the court noted that plaintiff "certified" the property as "free of . . . defects" after her fall, when she had a "legal obligation to report any disclosable defects."

PLAINTIFF'S CONTENTION

The sole issue on appeal is whether the trial court erred in granting the defendant's motion for nonsuit. Plaintiff contends she produced sufficient direct and circumstantial evidence that defendant negligently "designed, constructed and maintained the subject property" to survive nonsuit. Plaintiff identifies five bases on which the jury could have found that plaintiff's fall was the result of defendant's negligence: (1) the depression in the landing where water ponded was a construction defect; (2) the limestone surface was unreasonably dangerous when wet; (3) the unusual rise in the top step presented a trap for the unwary; (4) the location and over-watering of the potted plant on the landing pointed to unsafe maintenance practices; and (5) the failure to install a railing or a mat to ameliorate the above conditions was unreasonable, given defendant's expertise as a contractor and knowledge of the unsafe conditions.

DISCUSSION

The crux of plaintiff's case is that defendant was negligent in her construction and/or maintenance of the landing and top step of the Riata Road residence and that as a result of that negligence, plaintiff was injured. We therefore begin our discussion with a review of the principles of premises liability, with an emphasis on proof. We turn to a review of the principles governing nonsuits and then, with those principles in mind, we address plaintiff's specific claims.

Legal Principles

A. Elements of Premises Liability

"Since *Rowland v. Christian* (1968) 69 Cal.2d 108, the liability of landowners for injuries to people on their property has been governed by general negligence principles." (*Pineda v. Ennabe* (1998) 61 Cal.App.4th 1403, 1407.) The essential elements of a negligence claim against a property owner are (1) the defendant owned the property; (2) the defendant was negligent in the use or maintenance of the property; and (3) the

defendant's negligence was a substantial factor in causing plaintiff's injury. (Civ. Code § 1714, subd. (a).)

A property owner has a duty to exercise ordinary care in using or maintaining his or her property to avoid exposing others to an unreasonable risk of injury; the failure to fulfill this duty is negligence. (*Alcaraz v. Vece* (1997) 14 Cal.4th 1149, 1156; *Sprecher v. Adamson Companies* (1981) 30 Cal.3d 358, 371-372.) This duty is owed to all persons whom the owner, as a reasonably prudent person under the same or similar circumstances, should have foreseen would be exposed to a risk of injury. (*Rowland v. Christian* (1968) 69 Cal.2d 108; see generally, 6 Witkin, Summary of Cal. Law (9th ed. 1988) Torts, §§ 894-900, pp. 264-272; 5 Witkin, *supra,* §§ 578-598, pp. 673-697.) "[T]he liability imposed is for negligence. The question is whether in the management of his property, the possessor of land has acted as a reasonable person under all the circumstances. The likelihood of injury to plaintiff, the probable seriousness of such injury, the burden of reducing or avoiding the risk, the location of the land, and the possessor's degree of control over the risk-creating condition are among the factors to be considered by the trier of fact in evaluating the reasonableness of a defendant's conduct." (*Sprecher v. Adamson Companies, supra*, 30 Cal.3d at p. 372.)

As a general rule, an owner of premises is not liable for an injury suffered by a person on the premises that resulted from a dangerous or defective condition of which the owner was unaware. But liability may be imposed if the condition existed for such a length of time that an owner exercising reasonable care would have discovered it in time to remedy it or to give warning before the injury occurred. (*Ortega v. Kmart Corp.* (2001) 26 Cal.4th 1200; 6 Witkin, *supra*, §§ 926-928, pp. 297-299.) "Although liability might easily be found where the landowner has actual knowledge of the dangerous condition, '[the] landowner's lack of knowledge of the dangerous condition is not a defense. He has an affirmative duty to exercise ordinary care to keep the premises in a reasonably safe condition, and therefore must inspect them or take other proper means to

ascertain their condition. And if, by the exercise of reasonable care, he would have discovered the dangerous condition, he is liable.' [Citation.]" (*Swanberg v. O'Mectin* (1984) 157 Cal.App.3d 325, 330, italics omitted.) Conversely, if an unsafe condition is so obvious that a person could reasonably be expected to see it, the owner does not have a duty to warn of the condition. However, he may still have a duty to correct the condition. (*Osborn v. Mission Ready Mix* (1990) 224 Cal.App.3d 104, 121-122.)

B. Nonsuit

"A motion for nonsuit is a procedural device which allows a defendant to challenge the sufficiency of plaintiff's evidence to submit the case to the jury. [Citation.]" (*Campbell v. General Motors Corp.* (1982) 32 Cal.3d 112, 117.) "The rule is that a trial court may not grant a defendant's motion for nonsuit if plaintiff's evidence would support a jury verdict in plaintiff's favor. [Citations.]" (*Id.* at pp. 117-118. Accord, *Zavala v. Board of Trustees* (1993) 16 Cal.App.4th 1755, 1763.) "Because a grant of the motion serves to take a case from the jury's consideration, courts traditionally have taken a very restrictive view of the circumstances under which nonsuit is proper." (*Campbell v. General Motors Corp., supra,* 32 Cal.3d at p. 117. Accord, *Carson v. Facilities Development Co., supra,* 36 Cal.3d at p. 838.) "In determining whether plaintiff's evidence is sufficient, the court may not weigh the evidence or consider the credibility of witnesses. Instead, the evidence most favorable to plaintiff must be accepted as true and conflicting evidence must be disregarded." (*Campbell v. General Motors Corp., supra,* 32 Cal.3d at p. 118.)

C. Standard of Review

In reviewing the grant of nonsuit, the appellate court is "guided by the same rule requiring evaluation of the evidence in the light most favorable to the plaintiff." (*Carson v. Facilities Development Co.* (1984) 36 Cal.3d 830, 839.) While the appellate court reviews the whole record, and not only excerpts chosen by plaintiff, the court must give value to plaintiff's evidence, and indulge every legitimate inference in plaintiff's favor.

(*Kidron v. Movie Acquisition Corp.* (1995) 40 Cal.App.4th 1571, 1581; *DiPalma v. Seldman* (1994) 27 Cal.App.4th 1499, 1506.) The trial court's judgment of nonsuit will be sustained only if " 'interpreting the evidence most favorably to plaintiff's case and most strongly against the defendant and resolving all presumptions, inferences and doubts in favor of the plaintiff a judgment for the defendant is required as a matter of law.' " [Citation.] (*Nally v. Grace Community Church* (1988) 47 Cal.3d 278, 291.)

With the foregoing review standard in mind, we turn to the merits of plaintiff's claim. In doing so, we proceed with due regard for plaintiff's right to have the jury decide all contested fact issues.

Analysis: Plaintiff's Evidence

A. Slip or Trip

Plaintiff argues there was sufficient evidence from which the jury could have found either that (1) she slipped because the landing was wet or (2) tripped because the step was too low or (3) fell as a result of both conditions.

We agree. Plaintiff testified at trial that she slipped or tripped on something strange, that just before she fell she had a fleeting awareness that the landing was all wet, and that she also had a sense that the top step was "funny, smaller, [and] inconsistent" with the stairs leading up to front door.

Relying largely on deposition testimony used to impeach plaintiff's testimony at trial, defendant claims plaintiff tripped, and did not slip on water at all. The trial court, too, evidently dismissed plaintiff's testimony about the wetness on the landing, telling the jury the evidence was "irrelevant."

Both defendant and the trial court view plaintiff's case through the wrong lens. "A nonsuit or a directed verdict may be granted 'only when, disregarding conflicting evidence and giving to plaintiff's evidence all the value to which it is legally entitled, herein indulging in every legitimate inference which may be drawn from that evidence, the result is a determination that there is no evidence of sufficient substantiality to

support a verdict in favor of the plaintiff if such a verdict were given.' [Citations.]" (*Estate of Lances* (1932) 216 Cal. 397, 401.)

Here, we conclude, plaintiff's direct testimony was sufficient to permit the jury to find that her injuries were caused when she slipped on water covering the top step and landing, or tripped on the short step in front of the door, or both. It was for the jury to decide whether plaintiff's deposition testimony was more credible than her trial testimony, and nonsuit should not have been granted on this ground.

Moreover, for the reasons stated below, we think there was sufficient evidence for the jury to find that both the wetness on the landing and the height of the step were unsafe conditions of which the defendant was or should have been aware, given all of the circumstances.

B. Height of the Step

Plaintiff contends, and we agree, that there was ample evidence from which the jury could have found the height differential between the last, top step and the preceding landing and stairs created an unsafe condition. In addition to plaintiff's testimony, her assistant Brown testified to problems negotiating the top step that she had personally had, and that she had seen others have. Moreover, Dr. Derucher testified that the height of the top step created a safety issue, existing building codes notwithstanding. He believed it could have been designed differently and made safer. His testimony was that "due to the size of the one step facility being five and an eighth inches high, that to me was low from standards, and from research that it would be difficult to see. And that at the same time you should have a railing there, again to catch yourself if there was a slip." In our view, Dr. Derucher's testimony was sufficient to raise a jury question whether the top step presented a trap for the unwary.

Defendant contends that the jury could not have found the entrance step and the top landing unsafe because they met building code standards used in Monterey County. That contention is not well taken. A similar argument was made and rejected in *Amos v.*

Alpha Property Management (1999) 73 Cal.App.4th 895. The *Amos* court's discussion of the point is instructive here. "Defendants contend the fact the window in question met all applicable fire, building and safety codes establishes due care as a matter of law. There is no merit to this argument. [Citations.] The correct rule was stated in *Perrine* [v. *Pacific Gas & Elec. Co.* (1960) 186 Cal.App.2d 442, 448]: 'We are mindful that even though P. G. & E. complied with all applicable governmental safety regulations, this would not serve to absolve it from a charge of negligence, but just negligence *per se*, for one may act in strict conformity with the terms of such enactments and yet not exercise the amount of care which is required under the circumstances.' [Citation.] [¶] Thus, although the fact the window complied with applicable safety regulations is relevant to show due care, it is not dispositive." (*Id.* at p. 901.)

Similarly, in this case, the fact that defendant complied with existing building codes in constructing the landing and step before the front door would certainly have been relevant to the jury's resolution of the negligence question presented; it did not, however, warrant resolution of the negligence question against plaintiff as a matter of law.

C. Wetness

Plaintiff also contends, and we again agree, that there was sufficient evidence to support a jury verdict that water on the landing created an unsafe condition. The testimony established that, in fact, the staircase leading to the front door was slippery when wet, and was often wet due to gardening activities. For example, Brown testified about her numerous observations of water on the landing over the entire period of time she was involved in the preparation of the house for viewing by real estate agents, which stemmed from the gardeners' activities. Also, the buyer of the property testified to water problems he noticed after the sale. The expert's testimony gave additional support to plaintiff's assertion that defendant's failure to properly maintain the stairs and landing created an unsafe condition. Dr. Derucher testified that his inspection revealed a water

problem on the landing and stairs. He opined that both the brick border trimming the limestone, and the limestone itself, were slippery when wet. Furthermore, he observed an eighth-inch depression on the left side of the landing where he would expect water to pond. His conclusion was that that "the landing area due to the ponding situation created an unsafe maintenance situation." He testified further that "if you were going to leave it the way it was without placement of a mat there, that you should also have a railing at the door so . . . you could catch yourself if you were to start to go down. . . ." In our view, Dr. Derucher's testimony was sufficient to raise a jury question whether the limestone and bricks of which the stairs, landing and top step were composed, and the eighth-inch depression, created a condition conducive to ponding and slipperiness that should have been ameliorated in one or more of the ways he suggested (such as a mat or a railing).

Defendant contends there was no evidence that (1) ponding ever occurred where plaintiff fell; (2) the gardener ever hosed down the landing or was even present on the day of the accident; or (3) the wetness was not due to natural condensation. We reject that contention. Even in the absence of direct evidence on those points, from the evidence presented, the jury could have inferred that the ponding occurred on the left side of the landing where plaintiff said she fell. That inference was further strengthened by the photographic exhibits, which showed the door offset to the left; the hose on the left, in a bed of shrubs; a potted plant, on the right, with a green ring around the bottom at the catch-basin; and pine needles littering the landing. To be sure, there was no direct evidence the gardener hosed down the landing on the day plaintiff fell. But defendant herself admitted at trial that prior to moving into the main house from the guesthouse, she "told guy to clean up all this landing, hose stairs, hose down, brush out, scrub out, because I want to make sure everything is clean." And, in her deposition, she said her "gardener cleaned up the steps with water." Further, Brown testified that "just any bit of wind would have pine needles everywhere," and that the water she saw on the landing "looked like water from a hose from watering," and not like precipitation. From this

testimony it was inferable that the gardeners customarily hosed down the steps and landing with a hose to keep the area "spruced up" for realtors and their clients, and that this was the most likely source of the water on the landing the day plaintiff fell.

In sum, in our view, the evidence presented factual matters for the jury to decide. Nonsuit should not have been granted on this ground.

D. Notice

Plaintiff also argues, and we agree, there was sufficient evidence from which the jury could have found that defendant either knew, or should have known, of the dangerous conditions of her property.

Defendant maintains it was not proven she had actual notice of problems on the landing and top step, since nobody told her there was a problem and nobody had ever tripped or fallen before plaintiff. However, "[w]hile prior similar incidents are helpful to determine foreseeability, they are not required to establish it. Other circumstances may also place the landowner on notice of a dangerous condition. A rule which limits proof of foreseeability to evidence of prior similar incidents automatically precludes recovery to first-injured victims. Such a rule is inherently unfair and contrary to public policy." (*Isaacs v. Huntington Memorial Hospital* (1985) 38 Cal.3d 112, 135.)

Here, there was evidence that defendant not only owned and constructed the house but also lived in it for four and a half months. The conditions of which plaintiff complained existed literally at defendant's front door, where visitors could be expected to call. Since the house was for sale, additional foot traffic at the front door was to be expected. Indeed, defendant hired a gardener to maintain the property in a "spruced up" condition during this time, and he and his workers came for that purpose at least twice a week, and more often when the house was being shown. Although defendant testified she never inspected their work, this did not relieve her of the duty to do so. Also, Brown testified she and plaintiff tried to tell defendant about the dangerous conditions over lunch. From all of the evidence it was inferable that if defendant had inspected the

property, she would have discovered the wetness left by hosing and watering that was observed by Brown, plaintiff's assistant, and Seifert, the subsequent owner of the property.

Furthermore, with respect to the short top step, there was evidence that Brown and several realtors had had trouble negotiating it, and that one person had stubbed his toe, although none had ever fallen. Moreover, there is evidence that, although defendant did not *want* to hear about any problems with the property, plaintiff and her assistant did "mention to her after the brokers caravan all of the concerns of the brokers that came through."

Given that defendant had an affirmative duty to inspect her property in order to keep the property in a reasonably safe condition, it was for the jury to decide whether, upon inspection, defendant would have discovered a dangerous condition in connection with the watering and cleaning activities of the gardeners, the depression in the tile on the landing, or the short step.

E. Real Estate Disclosure Statement

Finally, plaintiff takes issue with defendant's contention that the "the proverbial nail in the coffin to appellant's case" was her failure to mention any defects in her real estate disclosure statement to prospective buyers. In our view, at most, this evidence impeached plaintiff's credibility. But credibility was for the jury to decide. The real estate disclosure statement provided no basis for granting a nonsuit.

DISPOSITION

The judgment ordered in favor of defendant is reversed.

_____

McAdams, J.

WE CONCUR:

_____

Rushing, P.J.

_____

Premo, J.